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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,688	11/09/2001	Masahiko Komatsubara	Q66733	5789

7590 04/08/2003

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[REDACTED] EXAMINER

VAN PELT, BRADLEY J

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/986,688	KOMATSUBARA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Bradley J Van Pelt	3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 November 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 2, line 6, "said console located between left and right drivers' seats" is inaccurate and should be changed to --said console located between left and right front seats--.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Armand (FR 2 736 884).

Armand discloses a control lever (10) system for a parking brake, comprising: a control lever for the parking brake, which is mounted to a console (17) of a vehicle for moving between an operating position in which it operates the parking brake, and a releasing position in which it releases the operation of the parking brake,

said console being located between left and right front drivers' seats of the vehicle;

a recess (16a) that accommodates the control lever when the control lever occupies the releasing position,

said recess being in said console and having an open lateral face at a lateral side thereof (each face is lateral and open, as broadly claimed); and

a releasing knob (21) operative for returning the control lever from the operating position to the releasing position, the releasing knob being disposed on a peripheral surface of a grip of the control lever, the peripheral surface being exposed in the open face of the recess when the control lever occupies the releasing position;

the control lever further comprising a protrusion formed on a head of the grip, the protrusion projecting toward a bottom surface of the recess, the protrusion (finger grooves on handle) defining a limit of grasping of the head of the grip by a driver;

the releasing position is substantially vertical (see Fig. 2);

the control lever is disposed in a driver-facing front dash of a vehicle.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armand (FR 2 736 884).

Armand discloses all of the instantly claimed invention (see above rejection of claim 1);

the control lever further comprising a protrusion formed on a head of the grip, the protrusion projecting toward a bottom surface of the recess, the protrusion (finger grooves on handle) defining a limit of grasping of the head of the grip by a driver;

the releasing position is substantially vertical (see Fig. 2);

the control lever is disposed in a driver-facing front dash of a vehicle.

Armand does not disclose the releasing knob being disposed on a peripheral surface of a grip of the control lever, the peripheral surface facing a bottom surface of the recess when the console lever occupies the releasing portion. *position*

It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose the knob on a peripheral surface of the grip, since it has been held that rearranging parts of an invention involves only routine skill in the art.

7. Claims 2, 6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armand (FR 2 736 884) in view of Decrouppe et al. (USPN 5,685,789).

Re: claim 2, Armand discloses all of the claimed invention (see above rejection of claim 1) except, the releasing knob being disposed on a peripheral surface of a grip of the control lever, the peripheral surface facing a bottom surface of the recess when the console lever occupies the releasing portion.

Decrouppe et al. shows a releasing knob being disposed on a peripheral surface of a grip of a control lever.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Armand to place the release knob on a peripheral surface for the purpose of ergonomic placement for the driver.

Re: claim 6, Armand discloses the control lever further comprising a protrusion formed on a head of the grip, the protrusion projecting toward a bottom surface of the recess, the protrusion (finger grooves on handle) defining a limit of grasping of the head of the grip by a driver.

Re: claim 10, Armand discloses that the releasing position is substantially vertical (see Fig. 2).

Re: claim 12, Armand discloses the control lever is disposed in a driver-facing front dash of a vehicle.

8. Claims 3, 4, 7, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armand (FR 2 736 884) in view of Decrouppe et al. (USPN 5,685,789) as applied to claims 1 and 2 above, and further in view of Larabet et al. (USPN 6,234,041).

Re: claims 3 and 4, the above reference combination shows the claimed invention except positioning means disposed between an inner wall of the recess and a head of the grip.

Larbet et al. shows positioning means disposed between an inner wall (30b) of the recess and a head (38f) of the grip (see Figs. 4 and 6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the above reference combination to provide a resilient positioning means for the purpose of cushioning the head in the slot.

Re: claim 7 and 8, Armand discloses the control lever further comprising a protrusion (finger grooves on handle) formed on a head of the grip, the protrusion projecting toward a bottom surface of the recess, the protrusion defining a limit of grasping of the head of the grip by a driver.

Re: claim 11, Armand discloses that the releasing position is substantially vertical (see Fig. 2).

***Response to Arguments***

9. Applicant's arguments filed March 31, 2003 have been fully considered but they are not persuasive. Applicant states that the following limitations are not disclosed, either expressly or inherently, in Armand:

said recess being in said console and having an open lateral face at a lateral side thereof;  
the releasing knob being disposed on a peripheral surface of a grip of the control lever,  
the peripheral surface being exposed in the open face of the recess when the control lever  
occupies the releasing position.

Armand does disclose, as broadly claimed, said recess being in said console and having an open lateral face at a lateral side thereof (each face of the lever is open and lateral as broadly claimed, otherwise the lever would suffer functionally);

the releasing knob being disposed on a peripheral surface of a grip of the control lever,  
the peripheral surface being exposed in the open face of the recess when the control lever  
occupies the releasing position.

10. In response to applicant's argument that Decrouppe et al. '789 and Larabet '041 are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case,

Decroupe et al. and Larabet are from the automotive art as the applicant's invention and both solve ergonomic formalities.

11. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3682

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is (703)305-8176. The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703)308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-9391 for regular communications and (703)305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-2168.

BJVP/~~BBP~~  
April 7, 2003



DAVID A. BUCCI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600